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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,695	10/29/2003	Andrew C. Kesling	815-1057.C	5076
7590 LLOYD L. ZICKERT 79 West Monroe Street Chicago, IL 60603	07/29/2008		EXAMINER LEWIS, RALPH A	
		ART UNIT 3732	PAPER NUMBER PAPER	
		MAIL DATE 07/29/2008	DELIVERY MODE PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/695,695	<b>Applicant(s)</b> KESLING, ANDREW C.
	<b>Examiner</b> Ralph A. Lewis	<b>Art Unit</b> 3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 April 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 15-17, 24 and 25 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 15-17, 24 and 25 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1668)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **Rejections Based on Prior Art**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-17 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller (3,345,745) in view of Lemchen (5,890,892).

Muller discloses an orthodontic appliance including a metal appliance body 7 (column 6 line 4) having a buccal-labial archwire receiving side and a lingual side, and a light-permeable polymer resin bonding base 16 (column 2 line 55) molded onto the lingual side of the body such that at least a part of the body is embedded in the base (column 2 line 14) and includes an integral peripheral lip overlapping part of the body. It is known to one of ordinary skill in the art that the disclosed resinous polymers are light-permeable. Lemchen teaches orthodontic polymer resin (column 4 lines 12, 16) the same as disclosed by Muller that is light, heat or chemically cured as known in the art. It would have been obvious to one of ordinary skill in the art to have the curing polymer resin to be heat or light-curing polymer resin. The appliance is capable of shipment to a user. Muller shows resin of acrylic or epoxy and the appliance is a bracket. Muller discloses a method of making the orthodontic appliance comprising making the

appliance body and molding the polymer resin to the lingual side of the body, the appliance having the features of above.

In response to the present rejection applicant argues that Muller teaches the forming of the appliance with resinous base in the orthodontist's office rather than "at the factory for shipment to a user." It is unclear to this examiner why the orthodontist's office can't be considered a "factory" and why the movement of the constructed bracket to the patient does not meet the "shipment" limitation. Alternatively, it would seem obvious on its face for a lower paid technician to prepare the brackets at a "factory" area and then deliver ("ship") the prepared bracket to the busy orthodontist. Or even more, importantly, it is unclear how the intended shipment of the Muller prepared bracket adds any objectively ascertainable structural distinctions to the device disclosed by Muller. In regard to method claim 24, there is no required shipment step set forth.

Additionally, applicant argues that at the time of the Muller invention in 1965 that light cured adhesives for orthodontics were not in use, "[t]herefore, Muller cannot be combined with any other reference of a later date to teach the use of a light cure adhesive for bonding an appliance to a tooth." The examiner disagrees, the obvious test is based upon what would have been obvious at the time of applicant's invention, not at the time one of the prior art references was invented. At the time of applicant's invention, light cured adhesives in the orthodontic field were in fact common place.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Muller in view of Lemchen and further in view of Kesling (5,263,859). The modified appliance of

Muller and Lemchen shows the limitations as described above; however, they do not show a first groove 70 formed in the body and a second groove 71 formed in the base coacting with the first groove to define an opening. Kesling teaches an orthodontic appliance comprising the grooves as claimed (figure 11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the appliance to have the opening of Kesling in order to be able to support auxiliaries in view of Kesling.

**Action Made Final**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

This application has been reassigned because Examiner Bumgarner has taken another position at the Office. Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (571) 273-8300. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Cris Rodriguez, can be reached at (571) 272-4964.

R.Lewis  
September 25, 2006

/Ralph Lewis/  
Primary Examiner, Art Unit 3732